MONTANA LEGISLATIVE HISTORY

Chapter 302 1999

Bill H _____ S 435 Original bill & history ✓ C

H. Committee on Bus + Labor			S. Committee on Judiciary		
Hearing Date(s)	3/18	C	Hearing Date(s)	2/16	C
	3-24	C			C
		C			C
		C			C
Date Out	3/25	C	out	2/16	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/12	Committee Executive Action--Bill Concurred as Amended	17	0
3/13	Committee Report--Bill Concurred as Amended		
3/26	2nd Reading Concurred	90	10
3/31	3rd Reading Concurred	90	10
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/22	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 463		
	Effective Date: 4/22/1999 - Sections 2(3)(b)(ii)(A) and 4		
	Effective Date: 1/01/2000 - Sections 1, 2(1), 2(2), 2(3)(a), 2(3)(b)(i), 2(3)(b)(ii)(B), 2(4), 2(5) and 3		

SB 435 Introduced by Waterman *LC0615 Drafter: B. Campbell*

Generally Revise the Montana Limited Liability Company Act by Adopting the Uniform Limited Liability Company Act;...

2/09	Fiscal Note Requested		
2/10	Introduced and 1st Reading		
2/10	Referred to Judiciary		
2/16	Hearing		
2/16	Fiscal Note Received		
2/16	Fiscal Note Signed		
2/17	Fiscal Note Printed		
2/17	Committee Executive Action--Bill Passed as Amended	8	0
2/17	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed	48	0
2/22	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Business and Labor		
3/18	Hearing		
3/25	Committee Executive Action--Bill Concurred	18	0
3/25	Committee Report--Bill Concurred		
3/27	2nd Reading Concurred	88	7
3/29	3rd Reading Concurred	91	7
	Returned to Senate		
3/30	Sent to Enrolling		
3/30	Returned from Enrolling		
3/31	Signed by President		
4/01	Signed by Speaker		
4/06	Transmitted to Governor		
4/12	Signed by Governor		
4/14	Chapter Number Assigned		
	Chapter Number 302		
	Effective Date: 4/12/1999 - All Sections		

Senate BILL NO. 435

INTRODUCED BY Mignon Waterman
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA LIMITED LIABILITY COMPANY ACT BY ADOPTING THE UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING SECTIONS 35-8-102, 35-8-201, 35-8-202, 35-8-208, 35-8-209, 35-8-304, 35-8-405, 35-8-501, 35-8-502, 35-8-601, 35-8-605, 35-8-703, 35-8-705, 35-8-801, 35-8-901, 35-8-902, 35-8-904, 35-8-905, 35-8-906, 35-8-908, 35-8-909, 35-8-1201, AND 35-8-1302, MCA; AND REPEALING SECTIONS 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, AND 35-8-1102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

~~(2)~~(4) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

~~(3)~~(5) "Court" includes every court having jurisdiction in the case.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

~~(4)~~(7) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

~~(5)~~(10) "Event of dissociation" means an event that causes a person to cease to be a member~~, as provided in 35-8-802~~.

~~(6)~~(11) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

~~(7)~~(12) "Foreign limited liability company" means an entity that is:

(a) an unincorporated ~~association~~ entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an ~~association~~ entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

~~(8)~~(13) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

~~(9)~~(14) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

~~(10)~~(15) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

~~(11)~~(16) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

~~(12) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705.~~

~~(13)~~(17) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

~~(14)~~(18) "Manager" means~~, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with~~

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~~35-8-302~~ a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

~~(15)~~(20) "Member" means a person who has been admitted to membership in a limited liability company, as provided in ~~35-8-801~~ 35-8-703, and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

~~(16)~~(22) "Operating agreement" means an agreement, including amendments, ~~written or oral,~~ as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

~~(17)~~(23) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

~~(18)~~(24) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

~~(19)~~(25) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

~~(20)~~(26) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(21)~~(29) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(22)~~(30) "Surviving limited liability company" means the constituent entity surviving the merger,

as identified in the articles of merger provided for in 35-8-1201.

(31) "Term company" means a limited liability company designated as a term company in its articles of organization."

NEW SECTION. **Section 2. Effect of operating agreement -- nonwaivable provisions.** (1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under [section 27] or 35-8-801.

(3) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under [section 17], but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) unreasonably reduce the duty of care under [section 17];

(d) eliminate the obligation of good faith and fair dealing under [section 17], but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) vary the right to expel a member upon the occurrence of an event specified in [section 30];

(f) vary the requirement to wind up the limited liability company's business in a case specified in 35-8-901(1)(c) or 35-8-902; or

(g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a member's distributional interest.

NEW SECTION. **Section 3. Purpose -- supplemental principles of law -- interest rate.** (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106.

NEW SECTION. **Section 4. Uniformity of application and construction.** Unless otherwise provided in this chapter, this chapter must be applied and construed to effectuate its general purpose to make the law with respect to the subject of this chapter among states enacting the Uniform Limited Liability Company Act.

Section 5. Section 35-8-201, MCA, is amended to read:

"**35-8-201. Formation.** (1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company."

Section 6. Section 35-8-202, MCA, is amended to read:

"**35-8-202. Articles of organization.** (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) ~~the latest date on which the limited liability company is to dissolve~~ whether the company is a term company and, if so, the term specified;

(c) the address of its principal place of business in this state and, if different, its registered office

and the name and address of its resident agent at the registered office in this state;

~~(d) a statement of whether the limited liability company is to be managed by a manager or by its members;~~

~~(c)~~(d) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in [section 2]. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 7. Section 35-8-208, MCA, is amended to read:

"**35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

~~(e) the last date upon which the limited liability company is to be dissolved;~~

~~(f)~~(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

NEW SECTION. **Section 8. Correcting filed record.** (1) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) preparing articles of correction that:

(i) describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(b) delivering the corrected record to the secretary of state for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

NEW SECTION. **Section 9. Certificate of existence or authorization.** (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of authorization for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

NEW SECTION. **Section 10. Liability for false statement in filed record.** Subject to 35-8-304 and [section 15], if a record authorized or required to be filed under this chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

NEW SECTION. **Section 11. Filing by judicial act.** If a person required by 35-8-204 to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition a district court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.

NEW SECTION. **Section 12. Knowledge and notice.** (1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) knows the fact;

(b) has received a notification of the fact; or

(c) has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) when an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

Section 13. Section 35-8-209, MCA, is amended to read:

"**35-8-209. Administrative dissolution -- rules.** (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company ~~has failed~~:

(a) (i) has failed for 60 days after a change of its registered office or registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law; ~~or~~

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses

have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) ~~The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1)~~ If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney general may maintain an action in district court to implement the provisions of this section."

Section 14. Section 35-8-304, MCA, is amended to read:

"**35-8-304. Liability of members and managers to third parties.** (1) Except as provided in subsection (3), a ~~A~~ person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

NEW SECTION. **Section 15. Limited liability company liability for member's or manager's conduct.** A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

NEW SECTION. **Section 16. Management and voting.** (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) the amendment of the operating agreement under [section 2];

(b) the authorization or ratification of acts or transactions under [section 2(3)(b)(ii)] that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's business wound up and the company terminated under 35-8-901;

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

NEW SECTION. **Section 17. General standards of member's and manager's conduct.** (1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this chapter or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

Section 18. Section 35-8-405, MCA, is amended to read:

"**35-8-405. Records and information.** (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and

financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company."

NEW SECTION. **Section 19. Actions by members.** (1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) the member's rights under the operating agreement;

(b) the member's rights under this chapter; or

(c) the rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of this state. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

NEW SECTION. **Section 20. Continuation of term company after expiration of specified term.** (1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

Section 21. Section 35-8-501, MCA, is amended to read:

"**35-8-501. Contributions to capital.** An interest in a limited liability company may be issued in exchange for tangible or intangible property or other benefit to the company, including money, promissory notes, services ~~rendered~~ performed, or ~~a promissory note or~~ other ~~obligation~~ agreements to contribute cash or property or contracts ~~to perform~~ for services to be performed."

Section 22. Section 35-8-502, MCA, is amended to read:

"**35-8-502. Liability for contribution.** (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value

or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) ~~Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise.~~ A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise under [section 16(3)(d)], may enforce the original obligation."

NEW SECTION. **Section 23. Member's and manager's rights to payments and reimbursement.** (1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

Section 24. Section 35-8-601, MCA, is amended to read:

"**35-8-601. Sharing of distributions.** Except as provided in ~~35-8-602 and~~ 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the

events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to ~~35-8-403~~ [section 16(3)(f)]."

Section 25. Section 35-8-605, MCA, is amended to read:

"**35-8-605. Liability upon wrongful distribution.** (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not ~~act~~ perform the member's or manager's duties in compliance with ~~35-8-604~~ [section 17].

~~(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:~~

~~(a) from each other member or manager who voted for or assented to the unlawful distribution; and~~

~~(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement.~~

(2) A member of a manager-managed company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604.

(3) A member or manager against whom an action is brought under this section may implead in the action:

(a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and

(b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution."

Section 26. Section 35-8-703, MCA, is amended to read:

"**35-8-703. Nature of ~~membership~~ distributional interest.** (1) A ~~membership interest~~ member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of [section 25], may be transferred in whole or in part.

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of [section 25], may also provide for the transfer of any interest represented by the certificate."

NEW SECTION. **Section 27. Transfer of distributional interest -- rights of transferee.** (1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 35-8-502 and for obligations under 35-8-605 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

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(b) receive, upon dissolution and winding up of the limited liability company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) seek under 35-8-902(2) a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

Section 28. Section 35-8-705, MCA, is amended to read:

"**35-8-705. Rights of judgment creditor.** (1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the ~~membership~~ distributional interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the ~~membership~~ distributional interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a ~~membership~~ distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) by the judgment debtor;

(b) by one or more of the other members with property other than the company's; or

(c) with the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company."

Section 29. Section 35-8-801, MCA, is amended to read:

"**35-8-801. Admission of members.** (1) Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a ~~limited liability company~~ distributional interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in ~~35-8-704~~ [section 27].

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company."

NEW SECTION. **Section 30. Events causing member's dissociation.** A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) the member's expulsion pursuant to the operating agreement;

(5) the member's expulsion by unanimous vote of the other members if:

(a) it is unlawful to carry on the company's business with the member;

(b) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to

conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) on application by the company or another member, the member's expulsion by judicial determination because the member:

(a) engaged in wrongful conduct that adversely and materially affected the company's business;

(b) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under [section 17]; or

(c) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) the member's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) in the case of a member who is an individual:

(a) the member's death;

(b) the appointment of a guardian or general conservator for the member; or

(c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) in the case of a member that is an estate or is acting as a member by virtue of being a

personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

NEW SECTION. **Section 31. Member's power to dissociate -- wrongful dissociation.** (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to [section (30)(1)].

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under [section (30)(6)];

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

NEW SECTION. **Section 32. Effect of member's dissociation.** (1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under [sections 33 and 34]; and

(b) in a term company:

(i) if the company dissolves and winds up its business on or before the expiration of its specified

term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under [sections 33 and 34] on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) the member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) the member's duty of loyalty under [section 17(2)(c)] terminates; and

(c) the member's duty of loyalty under [section 17(2)(a) and (2)(b)] and duty of care under [section 17(3)] continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.

NEW SECTION. **Section 33. Company purchase of distributional interest.** (1) A limited liability company shall purchase a distributional interest of a:

(a) member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under 35-8-901; or

(b) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under 35-8-903.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) a statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) the latest available balance sheet and income statement, if any; and

(c) an explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be

determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under 35-8-902(1)(d).

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in [section 34], together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under [section 31(2)] and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

NEW SECTION. **Section 34. Court action to determine fair value of distributional interest.** (1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under 35-8-902(1)(d). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with [section 33(2)].

(5) Interest must be paid on the amount awarded from the date determined under [section 33(1)] to the date of payment.

NEW SECTION. **Section 35. Dissociated member's power to bind limited liability company.** For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under part 12 of this chapter, is bound by an act of the dissociated member that would have bound the company under 35-8-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated member was then a member;

(2) did not have notice of the member's dissociation; and

(3) is not considered to have had notice under [section 36].

NEW SECTION. **Section 36. Statement of dissociation.** (1) A dissociated member or a limited liability company shall file in the office of the secretary of state a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of 35-8-301 and [section 35], a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 37. Section 35-8-901, MCA, is amended to read:

"35-8-901. Dissolution. (1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

~~(1)~~(a) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

~~(2) the written consent of all members;~~

~~(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement~~

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

~~(4)~~(e) entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected."

Section 38. Section 35-8-902, MCA, is amended to read:

"**35-8-902. Judicial dissolution.** (1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when: ~~it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.~~

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by [section 32]; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer."

Section 39. Section 35-8-904, MCA, is amended to read:

"**35-8-904. Agency power and liability of members or managers after dissolution.** (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of ~~dissolution~~ termination is presumed to constitute notice of

dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act."

Section 40. Section 35-8-905, MCA, is amended to read:

"**35-8-905. Distribution of assets.** Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under ~~35-8-602 or 35-8-603~~ 35-8-605;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under ~~35-8-602 or 35-8-603~~ 35-8-605; and

(3) unless otherwise provided in writing in the articles of organization or ~~an~~ a written operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions."

Section 41. Section 35-8-906, MCA, is amended to read:

"**35-8-906. Articles of ~~dissolution~~ termination.** ~~Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the~~

~~secretary of state and must set forth:~~

(1) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the secretary of state articles of termination stating:

(a) the name of the limited liability company;

~~(2) the date of filing of its articles of organization and all amendments to the articles;~~

~~(3)~~(b) the reason for filing the articles of ~~dissolution~~ termination;

~~(4)~~(c) the effective date of the articles of ~~dissolution~~ termination, which must be a date certain, if they are not to be effective upon the filing;

~~(5) any other information that the members or managers filing the articles determine necessary;~~

~~(6)~~(d) the name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company; ~~and~~

~~(7)~~(e) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company~~.~~;

(f) the date of the dissolution; and

(g) that the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination."

Section 42. Section 35-8-908, MCA, is amended to read:

"**35-8-908. Known claims against dissolved or terminated limited liability companies.** (1) A dissolved or terminated limited liability company may dispose of the known claims against it by ~~filing articles of dissolution pursuant to 35-8-906 and~~ following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of ~~dissolution~~ termination pursuant to 35-8-906, by which

the dissolved or terminated limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination."

Section 43. Section 35-8-909, MCA, is amended to read:

"**35-8-909. Unknown claims against dissolved or terminated limited liability companies.** (1) Subject to 35-8-908 and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) ~~*A claim may be enforced under 35-8-908 or this section:*~~

~~(a) against the dissolved limited liability company, to the extent of the undistributed assets; or~~

~~(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.~~ A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) ~~Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.~~ The

notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved or terminated limited liability company's principal office is located or, if there is none in this state, then in the county in which its designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) a claimant who did not receive written notice under 35-8-908;

(b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) a claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member."

NEW SECTION. **Section 44. Involuntary dissolution -- procedure.** (1) A limited liability company that is guilty of any of the actions or omissions described in 35-8-209(1) is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the secretary of state, thereby forfeiting its right to transact any business in this state.

(2) On or before September 1 of each year, the secretary of state shall compile a list of defaulting

limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The secretary of state shall give notice to the defaulting limited liability companies by:

(a) mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana limited liability companies once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-8-209 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve the defaulting limited liability companies;

(b) defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting limited liability companies will forfeit their rights to carry on business within the state.

(5) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all limited liability companies that have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The secretary of state shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

NEW SECTION. **Section 45. Reinstatement following administrative dissolution.** (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application and one copy of the application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; and

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

NEW SECTION. **Section 46. Appeal from denial of reinstatement.** (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

NEW SECTION. **Section 47. Service of process.** (1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable

diligence be found at the agent's address, the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand and, when applicable, pursuant to the provisions of Rule 4D(6) of the Montana Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of Rule 4D(6), the secretary of state shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the secretary of state may require the person requesting the service to reimburse the secretary of state for mailing costs. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The secretary of state shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

NEW SECTION. **Section 48. Derivative actions -- proper plaintiff -- pleading -- expenses.** (1) A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) must have been a member at the time of the transaction of which the plaintiff complains; or

(b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the

reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

Section 49. Section 35-8-1201, MCA, is amended to read:

"**35-8-1201. Merger.** (1) Pursuant to ~~any agreement~~ a plan of merger approved under subsection (3), a domestic limited liability company may merge with or into one or more limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities ~~formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement~~. In the case of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which the foreign entity is incorporated or organized.

~~(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.~~

~~(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:~~

~~(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;~~

~~(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and~~

~~(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.~~

~~(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in~~

~~each of the limited liability companies that merged:~~

~~(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;~~

~~(b) all property, real, personal, and mixed;~~

~~(c) all debts due to any of the limited liability companies; and~~

~~(d) all other things and causes of action belonging to each of the limited liability companies.~~

(2) A plan of merger must set forth:

(a) the name of each entity that is a party to the merger;

(b) the name of the surviving entity into which the other entities will merge;

(c) the type of organization of the surviving entity;

(d) the terms and conditions of the merger;

(e) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property, in whole or in part; and

(f) the street address of the surviving entity's principal place of business.

(3) A plan of merger must be approved:

(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under [section 53(2)]; and

(d) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of any requirement, by all the owners of interests in the entity.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later date as the articles may provide."

NEW SECTION. **Section 50. Articles of merger.** (1) After approval of the plan of merger under

35-8-1201(3), unless the merger is abandoned under 35-8-1201(4), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(a) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(b) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state;

(c) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(d) the name and address of the surviving limited liability company or other surviving entity;

(e) the effective date of the merger;

(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;

(g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and

(i) the name and address of the registered agent of the surviving entity.

(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.

(4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.

NEW SECTION. **Section 51. Effect of merger.** (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

NEW SECTION. **Section 52. Definitions.** As used in this part, the following definitions apply:

(1) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership formed under the laws of this state or comparable law of another jurisdiction.

(5) "Partner" means a general partner or a limited partner.

(6) "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners of a partnership or a limited partnership.

NEW SECTION. **Section 53. Conversion of partnership or limited partnership to limited liability company.** (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination of interests, cash, or other consideration.

(4) After a conversion is approved under subsection (2), the partnership or limited partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the requirements of 35-8-202 and that contain:

(a) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership;

(b) its former name;

(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (2); and

(d) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect.

(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of organization.

(7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or limited partnership before the conversion takes effect.

(8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.

(9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

NEW SECTION. **Section 54. Effect of conversion -- entity unchanged -- part not exclusive.** (1) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(b) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(e) except as otherwise provided in the agreement of conversion under [section 53(3)], all of the partners of the converting partnership continue as members of the limited liability company.

(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.

Section 55. Section 35-8-1302, MCA, is amended to read:

"**35-8-1302. Professional limited liability company name.** The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional limited company", "professional l.l.c.", "professional llc", ~~or~~ "p.l.l.c.", or "pllc"; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization."

NEW SECTION. **Section 56. Repealer.** Sections 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, and 35-8-1102, MCA, are repealed.

NEW SECTION. **Section 57. Codification instruction.** (1) [Sections 2, 3, and 4] are intended to be codified as an integral part of Title 35, chapter 8, part 1, and the provisions of Title 35, chapter 8, part 1, apply to [sections 2, 3, and 4].

(2) [Sections 8 through 12] are intended to be codified as an integral part of Title 35, chapter 8, part 2, and the provisions of Title 35, chapter 8, part 2, apply to [sections 8 through 12].

(3) [Sections 15 through 17] are intended to be codified as an integral part of Title 35, chapter 8, part 3, and the provisions of Title 35, chapter 8, part 3, apply to [sections 15 through 17].

(4) [Sections 19 and 20] are intended to be codified as an integral part of Title 35, chapter 8, part 4, and the provisions of Title 35, chapter 8, part 4, apply to [sections 19 and 20].

(5) [Section 23] is intended to be codified as an integral part of Title 35, chapter 8, part 5, and the provisions of Title 35, chapter 8, part 5, apply to [section 23].

(6) [Section 27] is intended to be codified as an integral part of Title 35, chapter 8, part 7, and the provisions of Title 35, chapter 8, part 7, apply to [section 27].

(7) [Sections 30 through 36] are intended to be codified as an integral part of Title 35, chapter 8, part 8, and the provisions of Title 35, chapter 8, part 8, apply to [sections 30 through 36].

(8) [Sections 44 through 46] are intended to be codified as an integral part of Title 35, chapter 8, part 9, and the provisions of Title 35, chapter 8, part 9, apply to [sections 44 through 46].

(9) [Sections 47 and 48] are intended to be codified as an integral part of Title 35, chapter 8, part 11, and the provisions of Title 35, chapter 8, part 11, apply to [sections 47 and 48].

(10) [Sections 50 through 54] are intended to be codified as an integral part of Title 35, chapter 8, part 12, and the provisions of Title 35, chapter 8, part 12, apply to [sections 50 through 54].

NEW SECTION. **Section 58. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 59. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

FISCAL NOTE

Bill #: SB0435 **Title:** Revise limited liability company laws

Primary Sponsor: Mignon Waterman **Status:** As introduced

Mignon Waterman 2/16/99
Sponsor signature Date

Dave Lewis 2-16-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:		
Other (Proprietary)		13,000
Revenue:	0	0
Net Impact on General Fund Balance:	**0**	**0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The Secretary of State will need to change the mainframe-based corporation program in order to account for the new information required by SB 435. Similar computer changes in the past have been between $11,000 to $15,000.
2. The Secretary of State will receive no additional revenue from this bill.

FISCAL IMPACT: Secretary of State	FY2000 Difference	FY2001 Difference
Expenditures:		
Operating Expenses		13,000
Funding:		
Other (Proprietary)		13,000
Net Impact to Fund Balance (Revenue minus Expenditure):		
Other		($13,000)

SB 435

SB 372 SPONSOR: Halligan, Mike SHORT TITLE: Revise certain family laws
REFERRED ON: 02/03/1999 HEARD ON: 02/09/1999
EXECUTIVE ACTION: 02/15/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 05/04/1999 Chapter Number Assigned

SB 390 SPONSOR: Bishop, Al SHORT TITLE: Work comp attorney fees for improperly denied benefits
REFERRED ON: 02/05/1999 HEARD ON: 02/11/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 402 SPONSOR: Stang, Spook SHORT TITLE: Submit home care worker background check to electors
REFERRED ON: 02/06/1999 HEARD ON: 02/12/1999
TABLED ON: 02/19/1999
FINAL DISPOSITION 03/31/1999 (S) Missed Deadline for Revenue Bill Transmittal

SB 403 SPONSOR: Stang, Spook SHORT TITLE: Criminal background check on home care worker applicants
REFERRED ON: 02/06/1999 HEARD ON: 02/12/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 404 SPONSOR: McNutt, Walter SHORT TITLE: Clarify exemption from execution for IRA
REFERRED ON: 02/06/1999 HEARD ON: 02/15/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

SB 416 SPONSOR: Grosfield, Lorents SHORT TITLE: Clarify order for new trial after guilty verdict
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/09/1999 HEARD ON: 02/15/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed -- VOTE: 8 - 0
FINAL DISPOSITION 04/14/1999 Chapter Number Assigned

SB 435 SPONSOR: Waterman, Mignon SHORT TITLE: Revise limited liability company laws
REFERRED ON: 02/10/1999 HEARD ON: 02/16/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/14/1999 Chapter Number Assigned

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 16, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 435, SB 461, SB 463, 2/13/1999
Executive Action: SB 320, SB 328, SB 404, SB 435

EXECUTIVE ACTION ON SB 320

Motion: **SEN. HOLDEN** moved that **SB 320 DO PASS.**

Discussion:

SEN. DOHERTY explained amendments SB032002.avl, **EXHIBIT(1).** Amendment no. 2 addressed that the injured person was convicted

person can be cured or not cured. This bill addresses a person's attempt to gain and keep employment and what grounds are legitimate grounds for that person to be fired from his or her employment. Whether a person is homosexual or heterosexual is a fundamental matter of civil rights.

SEN. BARTLETT related that it is striking how similar today's arguments against the intent of this bill are to the arguments made against including blacks in the Civil Rights Act of 1964. The arguments center around being faced with a change and the unknown outcome. Human beings inherently react by assuming the worst possible outcome. Just as we have not have had the worst possible outcome in relation to blacks or women in the workplace, we would not have the worst possible outcome in relation to homosexuals in the workplace and providing protections against adverse actions toward those people based solely on that characteristic rather than on legitimate job-related reasons.

CHAIRMAN GROSFIELD suspended executive action on SB 328 until the completion of the hearings scheduled for this day.

HEARING ON SB 435

Sponsor: **SEN. MIGNON WATERMAN, SD 26, Helena**

Proponents: **John Oitzinger, State Bar Association**
Daniel J. Whyte, Chief Legal Counsel, Secretary of State's Office
Thomas C. Morrison, Tax Attorney

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, introduced SB 435. She explained that she carried the limited liability act several years ago which allowed a beneficial form of incorporation for small businesses and farms in Montana. This bill includes revisions to that act which will help meet the uniform state and federal laws. The business community is now multi-state, multi-national, and global. The revisions will remove some of the current restrictions which protected partnerships in state and federal statutes. Some of the federal income tax regulations have been removed and this protection is no longer necessary.

{Tape : 2; Side : A; Approx. Time Counter : 9.15}

Proponents' Testimony:

John Oitzinger, State Bar Association, rose in support of SB 435. He presented his written testimony, **EXHIBIT(3).**

Daniel J. Whyte, Chief Legal Counsel, Secretary of State's Office, explained that annual reports that limited liability companies must file with his office to indicate that they are still in business and who is running the business, have been revised to meet the same requirements as corporations.

Thomas C. Morrison, Tax Attorney, remarked that a small oil company in Wyoming started a limited liability company in the early 1980s. Only two states had limited liability companies until 1986 when the tax law changed that eliminated favorable tax treatment provided for corporations when liquidating. This caused a nightmare for those doing business in S-Corporations. Every state now has limited liability company acts. Initially Montana allowed one person limited liability companies. The limited liability company had parity with the S-Corporation. Two years ago the IRS decided to let one person limited liability companies be taxed as Schedule C, non-corporate businesses.

Montana is now at a new threshold. The missing provision is that in estate planning, families cannot rig discounts to create minority interests in businesses that have lower values because they have contracted among themselves to make their business interests less valuable. The IRS does not impair the impediments that state law imposes on a business arrangement. Under the new act, a Montana rancher with a $5 million ranch is faced with at least $2.5 million in estate taxes. With shrewd estate planning under this legislation, a Montana rancher can place his ranch in a limited liability company and create a 49% interest for dad, a 49% for mom, and a 2% interest for junior and his sister. The 49% interests are not majority interests. Using this legislation, the IRS will have to respect that any person who owns an interest in that limited liability company will not have a controlling interest. The IRS will oftentimes give 50% to 60% discounts. If dad owns a 49% interest in a $5 million ranch, normally this would be $2.5 million but with a 50% to 60% discount his interest in the ranch may only be $1 million. This is a mechanism where the family ranch can pass down to the next generation with a minimum of hurt. This is a privilege that other taxpayers in other states are enjoying.

He requested that the bill have an immediate effective date. There is no reason why this very helpful law should not be used as soon as possible.

{Tape : 2; Side : A; Approx. Time Counter : 9.27}

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES recalled that when this legislation was introduced in 1993 a University of Montana professor was involved in the drafting of the legislation. He questioned whether he was involved with this legislation.

SEN. WATERMAN expressed regret that he is no longer in Montana. She added that he is the Dean of the Ohio Law School. The Law School has been involved in drafting the amendments.

SEN. HALLIGAN asked for a comparison between the Subchapter S-Corporation and the limited liability partnership. **Mr. Morrison** explained that the Subchapter S Corporation is more complicated and has a superficial simplicity. The tax free flow through from a Subchapter S Corporation can happen generally at the income earning level but this becomes a lobster trap. It is easy to put property in an S-Corporation. It is a nightmare to get the property out. If the purchase price of a ranch is $500,000 and it appreciates to $5 million inside an S-Corporation, to remove the corporate shell, there would be a $4.5 million gain which needs to pass to the shareholders. This does not happen in a limited liability company. This was the key change in the 1986 tax act. It scared everyone away from S-Corporations and triggered the huge build up of limited liability companies.

If you are in a limited liability company and it is an active business, your earnings are treated as active earnings for social security purposes. In the S-Corporation, the dividends that pass out are not taxed as active earnings.

Both plans offer limited liability. If you own your own business and are personally involved with a accident, you are personally liable as well as the business. If the employee or someone in the business causes an injury, the business is exposed and not the owner.

CHAIRMAN GROSFIELD remarked that the 50% discount would address federal taxes. **Mr. Morrison** stated that there are two interests. One is in the will and one is at term. The term limit of the liability company is very limited. The marketability of your business is quite limited. The federal government respects state legislature actions. The state legislature can impose impediments on the form of organization but the family members cannot rearrange the plan.

CHAIRMAN GROSFIELD questioned whether the legislation had been modified to serve Montana. **Mr. Oitzinger** remarked that he agreed

with changing the effective date as mentioned earlier. There is very little in the legislation that would be troublesome to an existing entity. The bill contains certain features of Montana law. In particular, the requirements for a written operating agreement were included. Greater definition of fiduciary duties are also included. The bill is available on the Internet and practitioners are aware of its contents.

Closing by Sponsor:

SEN. WATERMAN also did not have a problem with an immediate effective date. This bill will help small Montana companies and brings us into compliance with the uniform act.

{Tape : 2; Side : A; Approx. Time Counter : 9.38}

HEARING ON SB 463

Sponsor: **SEN. JACK WELLS, SD 14, Bozeman**

Proponents: **REP. BILL TASH, HD 34, Dillon**
Chad Massard, Small Business Owner

Opponents: **None**

Opening Statement by Sponsor:

SEN. JACK WELLS, SD 14, Bozeman, introduced SB 463. In 1997, he carried HB 534 which changed the law to establish fairness between independent contractors and state agencies, particularly the Department of Transportation. The department maintains that the law should only be used in contracts that had gone into effect after the law was established. That was not the intent of the legislature at the time the law was passed. The intent was that the state would be liable for interest and attorney fees in court cases where they lost to a contractor. After the governor mandatorily vetoed it, the amendments were rejected and it was returned to the governor in its original form and was signed. The bill and the law should apply to contracts that were in effect at the time the bill was passed as well as any contract cases under litigation at the time. If the cases in court were not included in the law, this would automatically divide contractors into two different classes: those capable of recovering costs after the law was passed and those who would not be able to recover costs even though their cases were in court at the time.

The governor's amendment proposed that the bill be effective only for contracts to be let after the bill was passed. These amendments were rejected.

Vote: Motion **carried 5-4 with BARTLETT, BISHOP, DOHERTY, and HALLIGAN voting no.**

SEN. DOHERTY was excused from the meeting.

EXECUTIVE ACTION ON SB 404

Motion: **SEN. MCNUTT** moved that **SB 404 BE AMENDED.**

Discussion:

SEN. MCNUTT explained the amendments, SB040401.avl - **EXHIBIT(4).** There was concern that if a judgment was filed, people may be able to shelter funds in an IRA. The amendments state that anything made before the suit resulting in judgment was filed would be judgment proof. After that, it would not be judgment proof.

Vote: Motion **carried unanimously - 8-0.**

Motion/Vote: **SEN. MCNUTT** moved that **SB 404 DO PASS AS AMENDED. Motion carried unanimously -8-0.**

EXECUTIVE ACTION ON SB 435

Motion: **SEN. HALLIGAN** moved that **SB 435 BE AMENDED.**

Discussion:

SEN. HALLIGAN explained that the amendment would include an immediate effective date on the bill.

Vote: Motion **carried unanimously - 8-0.**

Motion/Vote: **SEN. HALLIGAN** moved that **SB 435 DO PASS AS AMENDED. Motion carried unanimously -8-0.**

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 435** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Lorents Grosfield, Chair

And, that such amendments read:

1. Title, line 8.
Following: "MCA;"
Strike: "AND"

2. Title, page 10.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 43, line 18.
Insert: "NEW SECTION. **Section 60. Effective date.** [This act] is effective on passage and approval."

- END -

Committee Vote:
Yes 8, No 0.

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MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 2-16-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. STEVE DOHERTY	✓		
SEN. DUANE GRIMES	✓		
SEN. MIKE HALLIGAN	✓		
SEN. RIC HOLDEN	✓		
SEN. REINY JABS	✓		
SEN. WALT MC NUTT	✓		
SEN. AL BISHOP,VICE CHAIRMAN	✓		
SEN. LORENTS GROSFIELD, CHAIRMAN	✓		

Exhibit # 3
From 2/16/99
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

27 pages

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-16-99
SB NO. SB 435

Testimony of
John J. Oitzinger
In Support of Senate Bill 435
(Amendments to Montana Limited Liability Company Act)

My name is John Oitzinger. I am Vice Chair of the BETTR Committee of the State Bar of Montana, more fully known as the Business, Estates, Trusts, Tax & Real Property Section. I have been practicing law for 34 years; in Helena for the past 20 years and prior to that in New York, NY. I have had extensive experience in working with all types of public and private corporations and partnerships and to lesser extent with limited liability companies, which as you know, are a new business form that was first authorized in Montana in 1993.

The BETTR Committee recognized the need for a general revision of the Montana Limited Liability Company Act in 1997 and drafting these revisions has been actively under way since the summer of 1998. I am privileged to be assisted in preparing the text of these amendments by a number of very capable attorneys from around the state whose practice areas include tax and business organizations. Their names and affiliations are:

Richard M. Baskett, Attorney - CPA, Missoula, Montana;

David J. Dietrich, Dietrich Law Offices, Billings, Montana, former Chair of the BETTR Committee;

Professor Elaine Hightower Gagliardi, University of Montana School of Law, Missoula, Montana, former Chair of the BETTR Committee;

Scott M. Heard, Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P., Billings, Montana;

Garth Jacobson, Attorney at Law, Seattle, Washington, member of the BETTR committee that proposed the LLC Act in 1993;

Thomas C. Morrison, Attorney at Law, Helena, Montana;

Professor Sally Weaver, University of Montana School of Law, Missoula, Montana;

Daniel J. Whyte, Chief Legal Counsel, Montana Secretary of State, Helena, Montana; and

Tim Wylder, Jardine, Stephenson, Blewett & Weaver, P.C., Great Falls, Montana, current Chair of the BETTR Committee.

In addition to comments and suggestions from members of the BETTR Committee, the text of the proposed amendments has been available to interested members of the general public on the Internet at the State Bar of Montana web site: http://www.montanabar.org/.

5e

DATE 2-16-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY:

S.B. 435 S.B. 461 S.B. 463

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Kaz. McCloy	87-2222	Landowners	461	✓	
Patsy Klasna	348-3040	Private property rights	461	✓	
JOHN DITZLER	449-6390	STATE BAR	435	✓	
THOMAS C MORRISON Thomas C Morrison	443-1040	STATE BAR	435		
Gail Abercrombie	442-7882	MT Petroleum Assn	461		✓
Chad Mussard	683-2502	Small Buss.	463	✓	
Bill Tash	444-4185	HD 34	463	✓	
Florence Murphy	307 577-6002	EXPRESS PIPELINE	461		✓
Mike Strand	443-1940	Mt. Ind. Telecommunications Assn	SB461		✓
Leo Berry	443-6820	Yellowstone Pipeline Co	SB461		✓
John Fitzpatrick	442-9194	Touch America	SB461		✓
AARON BROWNING	449-5610	Northern Plains Resource Council	SB461	X	
Don Allen	443-5541	CENEX / Cenex	SB461		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Barbara Ranf	441-7230	USWEST	SB461		✓
Geoff Feiss	1424316	MT. Telecom. Assn.	SB461		✓
John Allen	449-3690	MDA. MBIP Northern Border	SB461		✓
JAY WATERMAN	497-2441	MPC	SB461		✓
MICK GEE	628-5302	CENEX PIPELINE	SB461		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SB 396 SPONSOR: Bartlett, Sue SHORT TITLE: Revise work comp premium rate for construction industry
REFERRED ON: 02/16/1999 HEARD ON: 03/03/1999
EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 16 - 0
FINAL DISPOSITION 03/23/1999 Chapter Number Assigned

SB 399 SPONSOR: Jabs, Reiny SHORT TITLE: Set maximum copying costs charged by health care providers for health care info
REFERRED ON: 03/02/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/22/1999 Bill Concurred -- VOTE: 13 - 5
FINAL DISPOSITION 04/14/1999 Chapter Number Assigned

SB 409 SPONSOR: Ellingson, Jon SHORT TITLE: Authorize net metering for certain energy systems
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/23/1999 Bill Concurred as Amended -- VOTE: 12 - 6
FINAL DISPOSITION 04/16/1999 Chapter Number Assigned

SB 410 SPONSOR: Keenan, Bob SHORT TITLE: Prohibit alcoholic beverages in non-licensed restaurants -- bottle clubs
REFERRED ON: 02/18/1999 HEARD ON: 03/19/1999
TABLED ON: 03/23/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 414 SPONSOR: Stang, Spook SHORT TITLE: Revise funding for life and health guaranty fund
REFERRED ON: 02/22/1999 HEARD ON: 03/12/1999
TABLED ON: 03/12/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee

SB 419 SPONSOR: Shea, Debbie SHORT TITLE: Clarify certain publicly owned licenses are eligible for gambling activities
REFERRED ON: 03/02/1999 HEARD ON: 03/19/1999
EXECUTIVE ACTION: 03/19/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/07/1999 Chapter Number Assigned

SB 435 SPONSOR: Waterman, Mignon SHORT TITLE: Revise limited liability company laws
REFERRED ON: 03/02/1999 HEARD ON: 03/18/1999
EXECUTIVE ACTION: 03/25/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/14/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 18, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Gay Ann Masolo (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 367, SB 482, SB 483, SB 484, SB 485, SB 435, SB 409 (3/3/99)
Executive Action: SB 483, SB 484, SB 485

Proponents' Testimony: Don Mann, Mortgage Banker.
{Tape : 2; Side : B; Approx. Time Counter : 243 - 262}

Bill Eustermann, Inter Mountain Financial Services.
{Tape : 2; Side : B; Approx. Time Counter : 262 - 290}

Don Hutchinson, Montana Banking Commissioner, Dept of Commerce.
{Tape : 2; Side : B; Approx. Time Counter : 290 - 304}

Mark Taylor, Montana Mortgage Owners
{Tape : 2; Side : B; Approx. Time Counter : 304 - 336}

Steve Snezak, Montana Assn. of Realtors,
{Tape : 2; Side : B; Approx. Time Counter : 336 - 350}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Brown, Krenzler, McKenney, Bookout, Ewer, and Simon questions witnesses.
{Tape : 2; Side : B; Approx. Time Counter : 350 - 500}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 232}

Closing by Sponsor: Senator Mesaros closed SB 486. Rep. Sliter to carry on the House floor.
{Tape : 3; Side : A; Approx. Time Counter : 232 - 240}

EXECUTIVE ACTION ON SB 483, SB 484, SB 485

Motion/Vote: **REP. SLITER** moved that **SB 483, SB 484, SB 485 BE TABLED. Motion carried unanimously.**
{Tape : 3; Side : A; Approx. Time Counter : 240 - 290}

HEARING ON SB 435

Opening Statement by Sponsor: Senator Waterman, SD 26 introduced SB 435.
{Tape : 3; Side : A; Approx. Time Counter : 290 - 321}

Proponents' Testimony: John Whittsinger of State Bar
{Tape : 3; Side : A; Approx. Time Counter : 321 - 410}

Don White, Chief Legal Council, Secretary of State Office
{Tape : 3; Side : A; Approx. Time Counter : 410 - 484}

Tim Morrison, Helena Tax Attorney
{Tape : 3; Side : A; Approx. Time Counter : 484 - 500}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 59}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Simon, and Ewer question witnesses.
{Tape : 3; Side : B; Approx. Time Counter : 59 - 92}

Closing by Sponsor: Senator Waterman closed SB 435, Rep. Ewer to carry on house floor.
{Tape : 3; Side : B; Approx. Time Counter : 92 - 101}

HEARING ON SB 409

Opening Statement by Sponsor: Senator Ellingson, SD 33 introduced SB 409.
{Tape : 3; Side : B; Approx. Time Counter : 101 - 116}

Proponents' Testimony: Bob Anderson, Commissioner of PSC. EXHIBIT(2)
{Tape : 3; Side : B; Approx. Time Counter : 116 - 188}

Jeff Barr, Montana Environmental Information Center. EXHIBIT(3) EXHIBIT(4)
{Tape : 3; Side : B; Approx. Time Counter : 188 - 224}

Gary Willis, Montana Power Co.
{Tape : 3; Side : B; Approx. Time Counter : 224 - 267}

Deb Smith, National Resources Defense Council, NW Coalition. EXHIBIT(5)
{Tape : 3; Side : B; Approx. Time Counter : 267 - 355}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Lawson, Bookout, Tuss, Pavlovich and McKenney questions witnesses.
{Tape : 3; Side : B; Approx. Time Counter : 355 - 500}
{Tape : 4; Side : A; Approx. Time Counter : 0 - 10}

Proponents' Testimony: Ron Perry, Commercial Energy of Cut Bank offered amendments and testimony.
{Tape : 4; Side : A; Approx. Time Counter : 10 - 35}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/18/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo			X
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3-18-99

BILL NO. SB 435 SPONSOR(S)

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	DAN WHYTE	CAPITOL	SEC. OF STATE
(P) O I	JOHN UTTENDORF	314 N. MAIN HELENA	STATE BAR
(P) O I	THOMAS E THOMPSON	111 N. LAST CHANCE 13B) Helena MT	STATE BAR
P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 24, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 97, HB 184, SB 482, SB 271, SB 435, SB 446, SB 453, SB 490, HB 515, HB 516, SB 217, SB 319, HB 364, HB 670

EXECUTIVE ACTION ON SB 271

Motion: REP. KRENZLER moved that SB 271 BE CONCURRED IN.
Motion/Vote: REP. KRENZLER moved that SB 271 BE AMENDED. Motion carried 12-6 with Ewer, Juneau, Krenzler, Squires, Stovall, and Tuss voting no. EXHIBIT(4)
{Tape : 2; Side : A; Approx. Time Counter : 308 - 463}

Motion: REP. MCKENNEY moved that SB 271 BE CONCURRED IN AS AMENDED. EXHIBIT(5)
{Tape : 2; Side : A; Approx. Time Counter : 463 - 478}

Motion/Vote: REP. PAVLOVICH moved that SB 271 BE TABLED. Motion failed 8-10 with Barnett, Bitney, Brown, Lawson, Masolo, McKenney, Simon, Sliter, Stovall, and Trexler voting aye.

Motion/Vote: REP. SLITER moved that SB 271 BE CONCURRED IN AS AMENDED. Motion carried 10-8 with Bookout-Reinicke, Ewer, Juneau, Krenzler, Matthews, Pavlovich, Squires, and Tuss voting no.
{Tape : 2; Side : A; Approx. Time Counter : 478 - 500}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 84}

EXECUTIVE ACTION ON SB 435

Motion/Vote: REP. EWER moved that SB 435 BE CONCURRED IN. Motion carried unanimously.
{Tape : 2; Side : B; Approx. Time Counter : 84 - 114}

EXECUTIVE ACTION ON SB 446

Motion: REP. SLITER moved that SB 446 BE CONCURRED IN.
{Tape : 2; Side : B; Approx. Time Counter : 114 - 124}

Motion/Vote: REP. PAVLOVICH moved that SB 446 BE AMENDED. Motion failed 4-14 with Barnett, Bitney, Bookout-Reinicke, Brown, Ewer, Juneau, Krenzler, Lawson, Masolo, McKenney, Simon, Sliter, Stovall, and Trexler voting aye.
{Tape : 2; Side : B; Approx. Time Counter : 124 - 204}

Motion/Vote: REP. EWER moved that SB 446 BE AMENDED. Motion failed 5-13 with Bitney, Bookout-Reinicke, Brown, Ewer, and Simon voting aye.
{Tape : 2; Side : B; Approx. Time Counter : 204 - 221}

HOUSE STANDING COMMITTEE REPORT

March 25, 1999

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 435** (third reading copy -- blue) be **concurred in.**

Signed: _____
Representative Bruce Simon, Chair

To be carried by Representative David Ewer

- END -

Committee Vote:
Yes 18, No 0.

671330SC.ham

3-25
3-35

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/24/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X		
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

AN ACT GENERALLY REVISING THE MONTANA LIMITED LIABILITY COMPANY ACT BY ADOPTING THE UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING SECTIONS 35-8-102, 35-8-201, 35-8-202, 35-8-208, 35-8-209, 35-8-304, 35-8-405, 35-8-501, 35-8-502, 35-8-601, 35-8-605, 35-8-703, 35-8-705, 35-8-801, 35-8-901, 35-8-902, 35-8-904, 35-8-905, 35-8-906, 35-8-908, 35-8-909, 35-8-1201, AND 35-8-1302, MCA; REPEALING SECTIONS 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, AND 35-8-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-8-102, MCA, is amended to read:

"**35-8-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

~~(2)~~(4) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

~~(3)~~(5) "Court" includes every court having jurisdiction in the case.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

~~(4)~~(7) "Disqualified person" means any person or entity that for any reason is or becomes

ineligible under this chapter to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

~~(5)~~(10) "Event of dissociation" means an event that causes a person to cease to be a member~~, as provided in 35-8-802~~.

~~(6)~~(11) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

~~(7)~~(12) "Foreign limited liability company" means an entity that is:

(a) an unincorporated ~~association~~ entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an ~~association~~ entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

~~(8)~~(13) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

~~(9)~~(14) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

~~(10)~~(15) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

~~(11)~~(16) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

~~(12) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705.~~

~~(13)~~(17) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

~~(14)~~(18) "Manager" means~~, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with 35-8-302~~ a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

~~(15)~~(20) "Member" means a person who has been admitted to membership in a limited liability company, as provided in ~~35-8-801~~ 35-8-703, and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

~~(16)~~(22) "Operating agreement" means an agreement, including amendments, ~~written or oral,~~ as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

~~(17)~~(23) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

~~(18)~~(24) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

~~(19)~~(25) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

~~(20)~~(26) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(21)~~(29) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(22)~~(30) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(31) "Term company" means a limited liability company designated as a term company in its articles of organization."

Section 2. Effect of operating agreement -- nonwaivable provisions. (1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under [section 27] or 35-8-801.

(3) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under [section 17], but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) unreasonably reduce the duty of care under [section 17];

(d) eliminate the obligation of good faith and fair dealing under [section 17], but the operating agreement may determine the standards by which the performance of the obligation is to be measured,

if the standards are not manifestly unreasonable;

(e) vary the right to expel a member upon the occurrence of an event specified in [section 30];

(f) vary the requirement to wind up the limited liability company's business in a case specified in 35-8-901(1)(c) or 35-8-902; or

(g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a member's distributional interest.

Section 3. Purpose -- supplemental principles of law -- interest rate. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106.

Section 4. Uniformity of application and construction. Unless otherwise provided in this chapter, this chapter must be applied and construed to effectuate its general purpose to make the law with respect to the subject of this chapter among states enacting the Uniform Limited Liability Company Act.

Section 5. Section 35-8-201, MCA, is amended to read:

"**35-8-201. Formation.** (1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company."

Section 6. Section 35-8-202, MCA, is amended to read:

"**35-8-202. Articles of organization.** (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) ~~the latest date on which the limited liability company is to dissolve~~ whether the company is a term company and, if so, the term specified;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its resident agent at the registered office in this state;

~~(d) a statement of whether the limited liability company is to be managed by a manager or by its members;~~

~~(e)~~(d) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in [section 2]. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 7. Section 35-8-208, MCA, is amended to read:

"**35-8-208. Annual report for secretary of state.** (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

~~(e) the last date upon which the limited liability company is to be dissolved;~~

~~(f)~~(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each

licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

Section 8. Correcting filed record. (1) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) preparing articles of correction that:

(i) describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(b) delivering the corrected record to the secretary of state for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

Section 9. Certificate of existence or authorization. (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of authorization for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

Section 10. Liability for false statement in filed record. Subject to 35-8-304 and [section 15], if a record authorized or required to be filed under this chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

Section 11. Filing by judicial act. If a person required by 35-8-204 to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition a district court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.

Section 12. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) knows the fact;

(b) has received a notification of the fact; or

(c) has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) when an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

Section 13. Section 35-8-209, MCA, is amended to read:

"**35-8-209. Administrative dissolution -- rules.** (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company ~~has failed~~:

(a) (i) has failed for 60 days after a change of its registered office or registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law; ~~or~~

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) ~~The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1)~~ If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney general may maintain an action in district court to implement the provisions of this section."

Section 14. Section 35-8-304, MCA, is amended to read:

"**35-8-304. Liability of members and managers to third parties.** (1) Except as provided in subsection (3), a ~~A~~ person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members

for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

Section 15. Limited liability company liability for member's or manager's conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

Section 16. Management and voting. (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) the amendment of the operating agreement under [section 2];

(b) the authorization or ratification of acts or transactions under [section 2(3)(b)(ii)] that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's business wound up and the company terminated under 35-8-901;

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

Section 17. General standards of member's and manager's conduct. (1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived

by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this chapter or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

Section 18. Section 35-8-405, MCA, is amended to read:

"**35-8-405. Records and information.** (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and

the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company."

Section 19. Actions by members. (1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) the member's rights under the operating agreement;

(b) the member's rights under this chapter; or

(c) the rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of this state. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 20. Continuation of term company after expiration of specified term. (1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

Section 21. Section 35-8-501, MCA, is amended to read:

"**35-8-501. Contributions to capital.** An interest in a limited liability company may be issued in exchange for tangible or intangible property~~,~~ or other benefit to the company, including money, promissory notes, services ~~rendered~~ performed, or ~~a promissory note or~~ other ~~obligation~~ agreements to contribute cash or property or contracts ~~to perform~~ for services to be performed."

Section 22. Section 35-8-502, MCA, is amended to read:

"**35-8-502. Liability for contribution.** (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) ~~Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise.~~ A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise under [section 16(3)(d)], may enforce the original obligation."

Section 23. Member's and manager's rights to payments and reimbursement. (1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company

or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

Section 24. Section 35-8-601, MCA, is amended to read:

"**35-8-601. Sharing of distributions.** Except as provided in ~~35-8-602 and~~ 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to ~~35-8-403~~ [section 16(3)(f)]."

Section 25. Section 35-8-605, MCA, is amended to read:

"**35-8-605. Liability upon wrongful distribution.** (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not ~~act~~ perform the member's or manager's duties in compliance with ~~35-8-604~~ [section 17].

~~(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:~~

~~(a) from each other member or manager who voted for or assented to the unlawful distribution;~~

~~and~~

~~(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement.~~

(2) A member of a manager-managed company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604.

(3) A member or manager against whom an action is brought under this section may implead in the action:

(a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and

(b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution."

Section 26. Section 35-8-703, MCA, is amended to read:

"**35-8-703. Nature of ~~membership~~ distributional interest.** (1) A ~~membership interest~~ member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of [section 25], may be transferred in whole or in part.

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of [section 25], may also provide for the transfer of any interest represented by the certificate."

Section 27. Transfer of distributional interest -- rights of transferee. (1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 35-8-502 and for obligations under 35-8-605 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) receive, upon dissolution and winding up of the limited liability company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) seek under 35-8-902(2) a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

Section 28. Section 35-8-705, MCA, is amended to read:

"**35-8-705. Rights of judgment creditor.** (1) On application to a court of competent jurisdiction

by any judgment creditor of a member, the court may charge the ~~membership~~ distributional interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the ~~membership~~ distributional interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a ~~membership~~ distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) by the judgment debtor;

(b) by one or more of the other members with property other than the company's; or

(c) with the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company."

Section 29. Section 35-8-801, MCA, is amended to read:

"**35-8-801. Admission of members.** (1) Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a ~~limited liability company~~ distributional interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in ~~35-8-704~~ [section 27].

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company."

Section 30. Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) the member's expulsion pursuant to the operating agreement;

(5) the member's expulsion by unanimous vote of the other members if:

(a) it is unlawful to carry on the company's business with the member;

(b) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) on application by the company or another member, the member's expulsion by judicial determination because the member:

(a) engaged in wrongful conduct that adversely and materially affected the company's business;

(b) willfully or persistently committed a material breach of the operating agreement or of a duty

owed to the company or the other members under [section 17]; or

(c) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) the member's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) in the case of a member who is an individual:

(a) the member's death;

(b) the appointment of a guardian or general conservator for the member; or

(c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

Section 31. Member's power to dissociate -- wrongful dissociation. (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to [section (30)(1)].

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under [section (30)(6)];

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

Section 32. Effect of member's dissociation. (1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under [sections 33 and 34]; and

(b) in a term company:

(i) if the company dissolves and winds up its business on or before the expiration of its specified term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under [sections 33 and 34] on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) the member's right to participate in the management and conduct of the company's business

terminates, except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) the member's duty of loyalty under [section 17(2)(c)] terminates; and

(c) the member's duty of loyalty under [section 17(2)(a) and (2)(b)] and duty of care under [section 17(3)] continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.

Section 33. Company purchase of distributional interest. (1) A limited liability company shall purchase a distributional interest of a:

(a) member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under 35-8-901; or

(b) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under 35-8-903.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) a statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) the latest available balance sheet and income statement, if any; and

(c) an explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under 35-8-902(1)(d).

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense,

shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in [section 34], together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under [section 31(2)] and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

Section 34. Court action to determine fair value of distributional interest. (1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under 35-8-902(1)(d). If a limited liability company is so dissolved, the

dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with [section 33(2)].

(5) Interest must be paid on the amount awarded from the date determined under [section 33(1)] to the date of payment.

Section 35. Dissociated member's power to bind limited liability company. For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under part 12 of this chapter, is bound by an act of the dissociated member that would have bound the company under 35-8-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated member was then a member;

(2) did not have notice of the member's dissociation; and

(3) is not considered to have had notice under [section 36].

Section 36. Statement of dissociation. (1) A dissociated member or a limited liability company shall file in the office of the secretary of state a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of 35-8-301 and [section 35], a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 37. Section 35-8-901, MCA, is amended to read:

"**35-8-901. Dissolution.** (1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

~~(1)~~(a) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

~~(2) the written consent of all members;~~

~~(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement~~

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

~~(4)~~(e) entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected."

Section 38. Section 35-8-902, MCA, is amended to read:

"**35-8-902. Judicial dissolution.** (1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when: ~~it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.~~

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by [section 32]; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer."

Section 39. Section 35-8-904, MCA, is amended to read:

"**35-8-904. Agency power and liability of members or managers after dissolution.** (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of ~~dissolution~~ termination is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act."

Section 40. Section 35-8-905, MCA, is amended to read:

"**35-8-905. Distribution of assets.** Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under ~~35-8-602 or 35-8-603~~ 35-8-605;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under ~~35-8-602 or 35-8-603~~ 35-8-605; and

(3) unless otherwise provided in writing in the articles of organization or ~~an~~ a written operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions."

Section 41. Section 35-8-906, MCA, is amended to read:

"**35-8-906. Articles of ~~dissolution~~ termination.** ~~Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:~~

(1) At any time after dissolution and winding up, a limited liability company may terminate its

existence by filing with the secretary of state articles of termination stating:

(a) the name of the limited liability company;

~~(2) the date of filing of its articles of organization and all amendments to the articles;~~

~~(3)~~(b) the reason for filing the articles of ~~dissolution~~ termination;

~~(4)~~(c) the effective date of the articles of ~~dissolution~~ termination, which must be a date certain, if they are not to be effective upon the filing;

~~(5) any other information that the members or managers filing the articles determine necessary;~~

~~(6)~~(d) the name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company; ~~and~~

~~(7)~~(e) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company~~.~~;

(f) the date of the dissolution; and

(g) that the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination."

Section 42. Section 35-8-908, MCA, is amended to read:

"**35-8-908. Known claims against dissolved or terminated limited liability companies.** (1) A dissolved or terminated limited liability company may dispose of the known claims against it by ~~filing articles of dissolution pursuant to 35-8-906 and~~ following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of ~~dissolution~~ termination pursuant to 35-8-906, by which the dissolved or terminated limited liability company must receive the claim; and

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(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination."

Section 43. Section 35-8-909, MCA, is amended to read:

"**35-8-909. Unknown claims against dissolved or terminated limited liability companies.** (1) Subject to 35-8-908 and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) ~~A claim may be enforced under 35-8-908 or this section:~~

~~(a) against the dissolved limited liability company, to the extent of the undistributed assets; or~~

~~(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.~~ A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) ~~Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.~~ The

notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved or terminated limited liability company's principal office is located or, if there is none in this state, then in the county in which its designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) a claimant who did not receive written notice under 35-8-908;

(b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) a claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member."

Section 44. Involuntary dissolution -- procedure. (1) A limited liability company that is guilty of any of the actions or omissions described in 35-8-209(1) is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the secretary of state, thereby forfeiting its right to transact any business in this state.

(2) On or before September 1 of each year, the secretary of state shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The secretary of state shall give notice to the defaulting limited liability companies by:

(a) mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana limited liability companies once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-8-209 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve the defaulting limited liability companies;

(b) defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting limited liability companies will forfeit their rights to carry on business within the state.

(5) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all limited liability companies that have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The secretary of state shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

Section 45. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the

effective date of dissolution. The applicant shall file an official application and one copy of the application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; and

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

Section 46. Appeal from denial of reinstatement. (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Section 47. Service of process. (1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand and, when applicable, pursuant to the provisions of Rule 4D(6) of the Montana Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of Rule 4D(6), the secretary of state shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the secretary of state may require the person requesting the service to reimburse the secretary of state for mailing costs. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The secretary of state shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

Section 48. Derivative actions -- proper plaintiff -- pleading -- expenses. (1) A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) must have been a member at the time of the transaction of which the plaintiff complains; or

(b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the

transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

Section 49. Section 35-8-1201, MCA, is amended to read:

"**35-8-1201. Merger.** (1) Pursuant to ~~any agreement~~ a plan of merger approved under subsection (3), a domestic limited liability company may merge with or into one or more limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities ~~formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement~~. In the case of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which the foreign entity is incorporated or organized.

~~(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.~~

~~(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:~~

~~(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;~~

~~(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and~~

~~(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.~~

~~(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:~~

~~(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;~~

~~(b) all property, real, personal, and mixed;~~

~~(c) all debts due to any of the limited liability companies; and~~

~~(d) all other things and causes of action belonging to each of the limited liability companies.~~

(2) A plan of merger must set forth:

(a) the name of each entity that is a party to the merger;

(b) the name of the surviving entity into which the other entities will merge;

(c) the type of organization of the surviving entity;

(d) the terms and conditions of the merger;

(e) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property, in whole or in part; and

(f) the street address of the surviving entity's principal place of business.

(3) A plan of merger must be approved:

(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under [section 53(2)]; and

(d) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of any requirement, by all the owners of interests in the entity.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be

amended or abandoned as provided in the plan.

(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later date as the articles may provide."

Section 50. Articles of merger. (1) After approval of the plan of merger under 35-8-1201(3), unless the merger is abandoned under 35-8-1201(4), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(a) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(b) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state;

(c) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(d) the name and address of the surviving limited liability company or other surviving entity;

(e) the effective date of the merger;

(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;

(g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and

(i) the name and address of the registered agent of the surviving entity.

(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.

(4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.

Section 51. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the

merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

Section 52. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership formed under the laws of this state or comparable law of another jurisdiction.

(5) "Partner" means a general partner or a limited partner.

(6) "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners of a partnership or a limited partnership.

Section 53. Conversion of partnership or limited partnership to limited liability company. (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or cash or other consideration to be paid or delivered as a result of the

conversion of the interests of the partners, or a combination of interests, cash, or other consideration.

(4) After a conversion is approved under subsection (2), the partnership or limited partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the requirements of 35-8-202 and that contain:

(a) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership;

(b) its former name;

(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (2); and

(d) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect.

(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of organization.

(7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or limited partnership before the conversion takes effect.

(8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.

(9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

Section 54. Effect of conversion -- entity unchanged -- part not exclusive. (1) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(b) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(e) except as otherwise provided in the agreement of conversion under [section 53(3)], all of the partners of the converting partnership continue as members of the limited liability company.

(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.

Section 55. Section 35-8-1302, MCA, is amended to read:

"**35-8-1302. Professional limited liability company name.** The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional limited company", "professional l.l.c.", "professional llc", ~~or~~ "p.l.l.c.", or "pllc"; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization."

Section 56. Repealer. Sections 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, and 35-8-1102, MCA, are repealed.

Section 57. Codification instruction. (1) [Sections 2, 3, and 4] are intended to be codified as an integral part of Title 35, chapter 8, part 1, and the provisions of Title 35, chapter 8, part 1, apply to [sections 2, 3, and 4].

(2) [Sections 8 through 12] are intended to be codified as an integral part of Title 35, chapter 8, part 2, and the provisions of Title 35, chapter 8, part 2, apply to [sections 8 through 12].

(3) [Sections 15 through 17] are intended to be codified as an integral part of Title 35, chapter 8, part 3, and the provisions of Title 35, chapter 8, part 3, apply to [sections 15 through 17].

(4) [Sections 19 and 20] are intended to be codified as an integral part of Title 35, chapter 8, part 4, and the provisions of Title 35, chapter 8, part 4, apply to [sections 19 and 20].

(5) [Section 23] is intended to be codified as an integral part of Title 35, chapter 8, part 5, and the provisions of Title 35, chapter 8, part 5, apply to [section 23].

(6) [Section 27] is intended to be codified as an integral part of Title 35, chapter 8, part 7, and the provisions of Title 35, chapter 8, part 7, apply to [section 27].

(7) [Sections 30 through 36] are intended to be codified as an integral part of Title 35, chapter 8, part 8, and the provisions of Title 35, chapter 8, part 8, apply to [sections 30 through 36].

(8) [Sections 44 through 46] are intended to be codified as an integral part of Title 35, chapter 8, part 9, and the provisions of Title 35, chapter 8, part 9, apply to [sections 44 through 46].

(9) [Sections 47 and 48] are intended to be codified as an integral part of Title 35, chapter 8, part 11, and the provisions of Title 35, chapter 8, part 11, apply to [sections 47 and 48].

(10) [Sections 50 through 54] are intended to be codified as an integral part of Title 35, chapter 8, part 12, and the provisions of Title 35, chapter 8, part 12, apply to [sections 50 through 54].

Section 58. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 59. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 60. Effective date. [This act] is effective on passage and approval.

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